



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MARK A. STEPHENS, LTD.
FOR
ANN'S MOBILE HOME PARK
UNPERMITTED DISCHARGE**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mark A. Stephens, Ltd., regarding the privately owned pump station servicing Ann's Mobile Home Park, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" means the privately owned pump station servicing the on-site sanitary sewer collection system for Ann's Mobile Home Park, located at 2 Parkside Lane in Stafford, Virginia. The pump station connects to the Stafford County sanitary sewer collection system located subsurface in Garrisonville Road in Stafford County.
8. "Stephens, Ltd." means Mark A. Stephens, Ltd., a limited company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Stephens, Ltd. is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present

or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Stephens, Ltd. owns the pump station servicing the on-site sanitary sewer collection system for Ann's Mobile Home Park. The pump station connects to the Stafford County sanitary sewer collection system located subsurface in Garrisonville Road in Stafford County.
2. DEQ staff conducted an inspection of the Facility on April 15, 2016, in response to a complaint of raw sewage overflowing from the pump station. During the inspection, DEQ staff observed raw sewage actively overflowing from the concrete structure, flowing in close proximity to two mobile homes, into a wooded area, and then into an adjacent property owner's pond. The pond discharges into an unnamed tributary to Aquia Creek and the Smith Lake Reservoir. The owner of the pump station did not notify DEQ of the discharge.
3. The unnamed tributary has not been assessed, however that segment drains to Aquia Creek approximately 1.5 miles downstream from the site, which drains to Smith Lake/Aquia Reservoir, approximately 5 miles downstream from the site. Smith Lake provides water to the northern region of Stafford.

4. Based on the observations noted during the April 15, 2016, inspection, DEQ issued Notice of Violation No. W2016-04-N-002 to Stephens, Ltd. on April 18, 2016.
5. Va. Code § 62.1-44.5.A states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
6. Va. Code § 62.1-44.5.B states that “Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of raw sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.”
7. The Regulation, at 9 VAC 25-31-50.A, states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
8. 9 VAC 25-31-50.B States that “Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.”
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
10. The Department has issued no permits or certificates to Stephens, Ltd.
11. The pond and unnamed tributary to Aquia Creek are surface waters located wholly within the Commonwealth and are “state water” under State Water Control Law.
12. Based on the results of the April 15, 2016, inspection of the Facility, the Board concludes that Stephens, Ltd. has violated 9 VAC 25-31-50.A, 9 VAC 25-31-50.B , §62.1-44.5.A and §62.1-44.5.B by discharging raw sewage from the pump station owned by Stephens, Ltd. failing to report said discharge as described in paragraph C(2) through C(11) above.
13. A completed Reliability Classification Worksheet for Sewage Pumping Stations was submitted to DEQ on February 10, 2017, and revised on March 17, 2017. A Certificate to Construct the pump station replacement project was issued by DEQ on June 23, 2017.

14. In order for Stephens, Ltd. to return to compliance, DEQ staff and representatives of Stephens, Ltd. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mark A. Stephens, Ltd., and Mark A. Stephens, Ltd., agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13, 650.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 90 days of execution of this Order	\$3,412.50 or balance
Within 180 days of execution of this Order	\$3,412.50 or balance
Within 270 days of execution of this Order	\$3,412.50 or balance
Within 360 days of execution of this Order	\$3,412.50 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mark A. Stephens, Ltd. within 15 days of receipt of such letter, Mark A. Stephens, Ltd. shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

- 5 Mark A. Stephens, Ltd., shall include its Federal Employer Identification Number (FEIN) with the civil charge payments **and** shall indicate that the payments are being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mark A. Stephens, Ltd., shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mark A. Stephens, Ltd., for good cause shown by Mark A. Stephens, Ltd., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mark A. Stephens, Ltd., admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mark A. Stephens, Ltd., consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mark A. Stephens, Ltd., declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mark A. Stephens, Ltd., to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Mark A. Stephens, Ltd., shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mark A. Stephens, Ltd., shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mark A. Stephens, Ltd., shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mark A. Stephens, Ltd., Nevertheless, Mark A. Stephens, Ltd., agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Mark A. Stephens, Ltd., has completed all of the requirements of the Order;
 - b. Mark A. Stephens, Ltd., petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mark A. Stephens, Ltd..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mark A. Stephens, Ltd., from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mark A. Stephens, Ltd., and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Mark A. Stephens, Ltd., certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Mark A. Stephens, Ltd., to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mark A. Stephens, Ltd..
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Mark A. Stephens, Ltd., voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of February, 2019.



Thomas A. Faha, Northern Regional Director
Department of Environmental Quality

APPENDIX A SCHEDULE OF COMPLIANCE

Mark A. Stephens, Ltd., shall:

1. Immediately cease the discharge of raw sewage from the pump station owned by Mark A. Stephens, Ltd., to state waters.
2. Submit and obtain a Certificate to Operate application to DEQ for the replacement of the privately owned pump station that is the subject of this Order 30 days before placing the system into service.

DEQ Contact

Unless otherwise specified in this Order, Mark A. Stephens, Ltd., shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193

Mark A. Stephens, Ltd., voluntarily agrees to the issuance of this Order.

Date 12-18-18 By La Vaughn T. Davis, Pres.
(Person) (Title)
[Mark A. Stephens, Ltd.]

State of Maryland
~~Commonwealth of Virginia~~
City/County of Montgomery

The foregoing document was signed and acknowledged before me this 18th day of
December, 20 18, by La Vaughn Davis who is
President of Mark A. Stephens, Ltd., on behalf of the company.

Deanne Krieger
Notary Public

Registration No.

My commission expires: August 30, 2021

Notary seal: